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November 30, 2023

BY ECF

The Honorable Michael A. Hammer, U.S.M.J.
United States District Court for the District of New Jersey
Martin Luther King Federal Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: *Merck & Co., Inc., et al. v. Merck KGaA*, Civil Action No. 16-266 (ES/MAH)

Dear Judge Hammer:

This firm, along with Blank Rome LLP, represents Defendant Merck KGaA in the above-referenced matter. Please see the attached letter from my partner, David Bernstein, who is lead trial counsel in this case. I am filing this letter on his behalf as he is admitted *pro hac vice* and is unable to file a letter directly on ECF.

Respectfully submitted,

/s/ Megan K. Bannigan
Megan K. Bannigan

cc (by ECF): All Counsel of Record

Encl.

**Debevoise
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November 30, 2023

VIA ECF

Honorable Michael A. Hammer
United States Magistrate Judge
U.S. District Court - District of New Jersey
M.L.K. Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: Merck & Co. et al v. Merck KGaA, Civil Action No. 16-266 (ES) (MAH)

Dear Judge Hammer:

I write on behalf of all parties regarding the Final Pretrial Conference that the Court has re-scheduled for January 31, 2023.

Defendant's Position

Unfortunately I have a conflict on that date, as I am going to be trying a case before The Honorable Lee Rosenthal in the United States District Court for the Southern District of Texas. I have conferred with counsel for Plaintiffs, and we are all available for a Final Pre-Trial Conference on any date between February 26-29, 2024. We respectfully request that the Court schedule the Final Pre-Trial Conference on one of those dates. If none of those dates work for the Court, please let us know and we will confer with Plaintiffs' counsel to propose other dates (unfortunately, Plaintiffs' counsel was not available during the other dates in January that we had proposed to them, and I am not available earlier in February).

Plaintiffs' Position

This is Defendant's third request for postponement of the pre-trial conference, which was initially set to take place back on July 6, 2023. Plaintiffs have planned for the pretrial conference as currently scheduled on January 31, 2023. As we previously noted, there are ways to work around Mr. Bernstein's conflicts, including coverage by his partners. *See, e.g.*, D.I. 233 (Oct. 10, 2023 letter).

If the Court grants Defendant's request to move the pretrial conference again, Plaintiffs can make themselves available throughout February, including the weeks after Mr. Bernstein's Texas trial. That Texas trial is scheduled to begin on Monday January 29. It is a bench trial limited to liability and injunctive relief. The parties in that case have estimated that trial will take five days, ending Friday February 2.

Hon. Michael A. Hammer, U.S.M.J.

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Mr. Bernstein nevertheless wishes to hold the following week of February 5 open in the event the Texas trial goes long. That hypothetical may never come to pass. Even if it does, any extension should be relatively short, and limited to the start of that week. As for the weeks of February 12 and February 19, Mr. Bernstein states he will be in Asia for reasons unbeknownst to Plaintiffs.

We appreciate the Court's attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D. Bernstein', with a stylized flourish at the end.

David H. Bernstein

cc (by ECF): All Counsel of Record